IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 13858 of 2007(Y)

AGAINST THE ORDER DATED 10/04/2007 IN IA 835/2007 IN OS.378/1996 of MUNSIFF COURT, MAVELIKKARA
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PETITIONER:

N.RAGHAVAN NAIR, CHENNANKARA VEEDU,
NADUVILE MURI, CHUNAKKARA VILLAGE.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. PADMAVATHY AMMA, CHENNANKARA THARAYIL,
NADUVILE MURI, CHUNAKKARA VILLAGE.

2. K.KUNJIPILLAI AMMA, CHENNANKARA
THARAYIL, NADUVILE MURI, CHUNAKKARA VILLAGE.

3. MADHUSOODANAN PILLAI, CHENNANKARA
THARAYIL, NADUVILE MURI, CHUNAKKARA VILLAGE.

BY ADV. SRI.PHILIP MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 TRUE COPY OF THE APPLICATION I.A.835/07 IN OS 378/96 DTD.9.4.07.

EXT.P2 TRUE COPY OF THE ORDER IN IA 835/07 DTD.10.4.07 OF THE MUNSIFF COURT, MAVELIKKARA.

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 13858 OF 2007

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Dated this the 6th day of June, 2007.

J U D G M E N T

In this case notice is served on R1 and R3. R2 returned as expired. Since there is substantial representation for parties I am proceeding to dispose of the matter.

2. This writ petition is preferred challenging the order of review in I.A.835/07. A perusal of Ext.P1 application would reveal that a prayer was made by the present writ petitioner to appoint Sri. Gopalakrishna Pillai who was appointed as the Commissioner in O.S.303/96 to be appointed as Commissioner for doing the work further. The Court, instead of appointing Mr. Gopalakrishna Pillai, Advocate, appointed Sri. V.J. Alex, Advocate as Commissioner. The reason assigned by the Court is that there is a connected suit pending between the parties, i.e., O.S.378/96 wherein this V.J. Alex has visited the property with the assistance of the Taluk Surveyor and had filed a plan and report. He filed a petition to set aside that plan and report and it was dismissed by the Court. So the Court finds that since the subject matter involved in these two cases are one and the same it is only just

and fair to appoint Sri. V.J.Alex as the Commissioner to inspect the property in this case also. It has been held by this Court in so many decisions that it is advisable to avoid report by various Commissioners and it reiterates to appoint the same Commissioner and get report so that there can be finality on the factual matrix of the matter.

In this case just because Sri. Gopalakrishna Pillai has visited the property on an earlier occasion he need not be again appointed because the other Commissioner has done a substantial work with the assistance of Taluk Surveyor and therefore I do not find any infirmity in the order passed by the learned Munsiff in I.A.1175/96. I make it very clear that the factors noted by Sri. Gopalakrishna Pillai shall be kept alive and it can be made use of by either of the parties at the stage of trial for finding out the existence of certain facts on the date of inspection by the Commissioner in that case.

With this observation, this writ petition is disposed of.

M.N. KRISHNAN, JUDGE.

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